

**United States Department of Labor
Employees' Compensation Appeals Board**

D.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Des Moines, IA, Employer**

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**Docket No. 21-0369
Issued: August 13, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 13, 2021 appellant filed a timely appeal from a December 2, 2020 merit decision and a January 5, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a left hand condition causally related to the accepted October 9, 2020 employment incident; and (2) whether

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 5, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 19, 2020 appellant, then a 43-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 9, 2020 when operating a motor vehicle, he was involved in a head-on collision, injuring his left hand while in the performance of duty. He stopped work on October 9, 2020.

In support of his claim, appellant submitted an x-ray report dated October 9, 2020 from Dr. Glenn Hammer, a Board-certified diagnostic radiology and neuroradiology specialist. Dr. Hammer stated that appellant presented with low ulnar hand pain after a vehicle collision. He found no fracture or dislocation.

Appellant also submitted an x-ray report dated October 19, 2020, from Dr. David Jensen, a Board-certified diagnostic radiology specialist. Dr. Jensen stated that appellant was seen for left hand pain stemming from a motor vehicle accident on October 9, 2020. He found no fractures or abnormalities.

In a development letter dated October 23, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On October 28, 2020 the employing establishment issued an authorization for examination and/or treatment (Form CA-16), authorizing appellant to seek medical care for the alleged injury.

In an October 28, 2020 report, a nurse practitioner indicated that appellant's findings were negative for a hand injury, but that a brace had been given to him on October 19, 2020.

OWCP received a report dated November 9, 2020 from Dr. Lindsey Caldwell, a Board-certified orthopedic surgeon. Dr. Caldwell related that appellant's left wrist did not reveal a fracture, but that his symptoms appeared to be secondary to a soft tissue contusion, with ulnar nerve symptoms that could be nerve compression in the Guyon's canal. He diagnosed left wrist pain and advised that appellant could return to work with a five-pound lifting restriction.

By decision dated December 2, 2020, OWCP found that appellant had established that the incident occurred as alleged, but denied the claim as the evidence did not establish a medical diagnosis causally related to the accepted incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In response, appellant resubmitted the November 9, 2020 report from Dr. Caldwell. In an addendum to that, report dated November 20, 2020, Dr. Caldwell noted that OWCP had requested a more specific diagnosis and a statement regarding causal relationship. He assessed injury of the ulnar nerve at the hand/wrist, caused by appellant's injury. Appellant also submitted a response to OWCP's development questionnaire.

On December 7, 2020 appellant requested reconsideration.

OWCP subsequently received a December 18, 2020 report from Dr. Mederic Hall, a Board-certified physical medicine and rehabilitation specialist. He evaluated appellant's left ulnar nerve and found no abnormalities. Dr. Hall related a diagnosis of left wrist pain.

In subsequent reports dated December 21, 2020, Dr. Caldwell diagnosed left wrist pain and provided work restrictions.

By decision dated January 5, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, must

³ *Supra* note 1.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a left hand condition causally related to the accepted October 9, 2020 employment incident.

In a report dated November 9, 2020, Dr. Caldwell diagnosed appellant with left hand pain. The Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁰ Dr. Caldwell also did not provide an opinion as to causal relationship. As noted, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ This report, therefore, is insufficient to establish appellant's claim.

OWCP received radiology reports dated October 9, 2020 from Dr. Hammer and October 19, 2020 from Dr. Jensen. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.¹² For this reason, Dr. Hammer and Dr. Jensen's reports are insufficient to meet appellant's burden of proof.

OWCP also received an October 28, 2020 report from a nurse practitioner. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value as such providers are not considered physicians as defined under FECA.¹³ This report is, therefore, insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a diagnosed left hand condition causally related to the accepted employment incident, the Board finds that appellant has not met his burden of proof.

⁹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *See S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹¹ *Id.*

¹² *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

¹³ Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *M.C.*, Docket No. 19-1074 (issued June 12, 2020); *S.L.*, Docket No. 19-0607 (issued January 28, 2020) (nurse practitioners are not considered physicians under FECA).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

The Board finds that appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. Consequently, he is not entitled to a review of the merits

¹⁴ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁵ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁷ *Id.* at § 10.608(a); *see also A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁸ *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁹

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. Appellant submitted reports dated November 20 and December 1, 2020 from Dr. Caldwell and December 18, 2020 from Dr. Hall. He also submitted narrative and radiological reports previously of record. These reports were cumulative of the prior evidence of record and did not relate a firm diagnosis of appellant's left wrist condition, resulting from the accepted motor vehicle incident. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²⁰ Appellant has not submitted relevant and pertinent new evidence of a medically diagnosed condition causally related to the accepted employment incident.²¹ As he did not provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).²²

The Board, accordingly, finds that OWCP properly determined that appellant was not entitled to further reviews of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²³

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left hand condition causally related to the accepted October 9, 2020 employment incident. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).²⁴

¹⁹ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

²⁰ *V.L.*, Docket No. 19-0069 (issued February 10, 2020); *A.K.*, Docket No. 19-1210 (issued November 20, 2019); *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *Richard Yadron*, 57 ECAB 207 (2005).

²¹ *A.K.*, *id.*, *P.C.*, Docket No. 18-1703 (issued March 22, 2019).

²² *See T.W.*, Docket No. 18-0821 (issued January 13, 2020).

²³ *J.B.*, *supra* note 18; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

²⁴ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracey P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2020 and January 5, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 13, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board